for the purpose of repairing or extending its lines; and it may also, with the consent of a majority of the stockholders, increase the capital stock for the purpose aforesaid. It may also, in its by-laws, determine the manner in which the stock of the company shall be held and assigned.

§ 12. Every stockholder shall be liable in his individual capacity, for any contract, debt, or engagement of such company to an amount over and above his stock, equal to the face value of his stock.

Indiana has also enacted by a statute in force from February 13, 1883 (Laws, p. 9; Rev. Stat. ed. 1888, chap. 43, § 4192, d.):—

§ 1. Any operator, clerk, servant, messenger, or employé of any telephone company doing business in this State, who discloses the contents of any dispatch, or message, or any conversation had between persons while using the line of any telephone company, except to a Court of justice, or to a person entitled to know the same, shall be fined not more than five hundred dollars, nor less than ten dollars.

JOHN B. UHLE.

(To be continued.)

## RECENT ENGLISH CASE.

*High Court of Appeals.*

### BUTLER *v.* THE MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY COMPANY.

Where a by-law of a railway company provides that a passenger failing or refusing to show or deliver up his ticket, when requested by a duly authorized agent of the company, shall be required to pay his fare from the station whence the train started, but such by-law makes no provision for enforcing this requirement, a passenger who has bought a ticket on condition of compliance with the by-laws, and has lost it, cannot be removed from the train for refusing to comply with such by-law.

The right to remove a passenger for non-compliance with such a by-law cannot be implied as part of the contract of carriage.

*Semble*, per Lord ESHER, M. R., that the by-law in question is not reasonable.

*Semble*, per LOPES, L. J., that no regulation providing for removal of a passenger from a train, for non-compliance with such a by-law, could be framed.

APPEAL from a judgment of MANISTY, J., in the Queen's Bench Division, at the trial of an action for assault.

The plaintiff had taken a ticket from Sheffield to Manchester and back, the ticket being marked, "subject to the conditions contained in the company's time-tables and advertisements." One of these conditions was a by-law stating

that any passenger refusing to show or deliver up his ticket, when requested by the duly authorized servant of the company, should be required to pay the fare from the station, whence the train originally started, to the end of the journey. Other by-laws provided that persons intoxicated, or using bad language, or smoking in carriages not provided for that purpose, should be removed from the company's carriages. On his return journey, just before reaching Sheffield, the plaintiff was requested to produce the return-half of his ticket, but could not do so, having lost it. He declined to pay the ordinary fare from Manchester, and offered his name and address. He refused to alight from the carriage, and was removed by force. MANISTY, J., gave judgment for the defendants, holding it to be an implied term of the contract that, if the passenger failed to produce his ticket, his right to be carried ceased, and that he might be removed from the carriage.

*Waddy*, *Q. C.*, and *Lawson Walton*, for the plaintiff.

*Lockwood*, *Q. C.*, and *Cyril Dodd*, for the defendants.

LORD ESHER, M. R. In this case the plaintiff, who was a passenger by the defendants' railway, had paid for a ticket, but had lost it. At a certain stage of the journey he was asked to produce his ticket, and, not being able to do so, was told that he must pay the ordinary third class fare from Manchester to Sheffield. He refused to do so, and thereupon the defendants' servants assumed the power of pulling the plaintiff forcibly out of the railway carriage in which he was travelling. The plaintiff brings an action of assault against the defendants for this action of their servants; and the defendants assert that they were justified in removing the plaintiff from their carriage by force, using no more force than was necessary for the purpose of overcoming his resistance. The defendants put it that the plaintiff was unlawfully upon their premises, and it is admitted that the allegation that he was so is material to their defence. The question, therefore, is whether it is true that he was unlawfully on their premises. I do not think that is made out. What is the nature of the relation between the plaintiff and the defendants? It is, as it appears to me, a contractual relation.

It was alleged that the contract was for a right to go on the defendants' land in the nature of an easement, but that, there being no grant of an easement under seal, there was only a license given by the defendants to go on their premises, which they could revoke. All I will say with regard to that contention is that, though it may have been quite right for the defendants' counsel to suggest the point, it seems to me, when considered, to be contrary to good sense. To say that a passenger by railway from London to Liverpool is to have an easement all over the line between those places seems to me really ridiculous; and the absurdity of such a view of the case becomes greater when we remember that companies often contract to convey passengers over the lines of other companies. It seems to me, therefore, that the considerations upon which the case of *Wood* v. *Leadbitter* (1845), 13 M. & W. 838, turned are not applicable in this case. The contract between the plaintiffs and defendants really is that, on his paying the fare for the journey, they will carry him in their carriage on the journey, for which he has so paid the fare, using due care for his safety while so doing. That contract may be subject to conditions by reason of notice given to that effect upon the ticket incorporating such conditions. In this case it is said that the ticket referred to certain conditions, and thereby incorporated them into the contract. The only conditions which can be alleged to be so incorporated into this contract are the by-laws and regulations which the company made in pursuance of the authority given them for that purpose by statute. They can only make by-laws and regulations in pursuance of their statutory powers, and accordingly we find that they assume to make certain by-laws and regulations as required under Railways Clauses Consolidation Act, 1845, viz: under the seal of the company and with the approval of the Board of Trade, and such regulations are the only conditions which can be looked on as incorporated by reference, by this ticket. One of such by-laws and regulations provides that, "Every passenger shall shew and deliver up his ticket to any duly authorized servant of the company when required to do so for any purpose; and any passenger travelling without a ticket, or failing or refusing to shew or deliver

up his ticket as aforesaid, shall be required to pay the fare from the station, whence the train originally started, to the end of his journey." I do not think it is necessary for the purposes of this case to discuss the question whether that is a valid or reasonable regulation, or how far the plaintiff would be bound by it if unreasonable. It would seem, if the decision in *Saunders* v. *South Eastern Ry. Co.* (1880), L. R. 5 Q. B. D. 456, be correct, not to be reasonable. Whenever it becomes necessary we must deal with that question, but I think we may, for the present purpose, assume that the condition is reasonable. The effect of it is that the passenger is under an obligation to show his ticket when asked to do so, and if he fails to do so, a certain consequence is to follow, viz: that he must pay the fare from the station whence the train started. But suppose that he refused to do so, he no doubt breaks his contract; but does it result that the company's servants may lay hands on him and remove him from the carriage? I do not think that it does. The remedy is by proceeding against him for the amount of the fare he refuses to pay. Where is there any contract by which he has agreed that, if he fails to show a ticket or to pay the fare mentioned in the regulation, the company may lay hands on him, and put him out of the carriage by force? No one has any right to lay hands forcibly on a man in the absence of some legal authority to do so, or some agreement to that effect. It is argued that such right on the part of the company must be implied, but no Court has a right to imply any term as between parties which was not clearly and obviously within the contemplation of both the parties, and I cannot agree with the learned Judge in the Court below in holding that such a term should be implied. For these reasons I think his decision was wrong, and that the appeal should be allowed, and judgment entered for the plaintiff.

LINDLEY, L. J. I am of the same opinion. The question raised by this case is one of great importance both to the company and the passenger. One knows that railway companies may be placed in great difficulty by the unscrupulous attempts of fraudulent persons to cheat them; and I do not desire to

express any opinion one way or the other on the question whether or not some condition might be made, which, if properly worded, would justify the company in future in taking the course they claimed to take in the present case. There does not seem to me to be any by-law or regulation in this case which authorized the company to remove from their carriage a passenger who failed to produce his ticket. That consideration seems to me to be the key to the whole case. How can the company justify laying hands on the plaintiff? The plaintiff had taken his ticket, and the effect was that there was a contract by the company to carry him to Manchester and back. There is no authority as yet to the effect that such a contract of carriage is a contract for an interest in land. It seems to me to be a totally different thing from a contract for an interest in land; and it seems to me absurd to test the case as one of a revocable license. It is a case of a contract for carriage. The doctrine of *Wood* v. *Leadbitter*, *supra*, does not appear to me to be at all applicable to the case of such a contract. Supposing that the contract of carriage involved a contract for production of the ticket or payment of another fare, and the plaintiff broke that part of the contract, does it follow as a matter of law that the defendants could turn him out of the carriage? The remedy is to take proceedings for the breach of contract on his part. It is argued that having broken the contract he was no longer lawfully on the defendants' premises. I do not see that that consequence follows. It does not appear to me that the contract between the plaintiff and the defendants was cancelled by reason of the plaintiff's breach of contract. In my opinion the defendants failed to show that the plaintiff was unlawfully upon their premises, and therefore they had no right to remove him therefrom by force. For these reasons I agree that the appeal should be allowed.

LOPES, L. J. It is somewhat extraordinary that there should be no authority on such an important point as that raised in the present case. To my mind the case is very clear. In the first place, it is to be observed that there is no by-law or regulation which can be relied on as protecting the defend-

ants in respect of what their servants did in this case. Whether any regulation could be framed which would do so, I doubt; but it is unnecessary to express any opinion as to that, because there is no such by-law or regulation in this case. That being so, the question is whether the company's servants were justified, in the absence of any such by-law or regulation, in laying hands on the plaintiff as they did. The plaintiff had, admittedly, properly taken his ticket for the journey from Sheffield to Manchester and back, and had paid the full fare for the journey, and admittedly he had lost his ticket, accidentally. The effect is, to my mind, that he was lawfully in the defendants' carriage. It seems to me sufficient to state so much to show that the defendants were not justified in assaulting him as they did. It is argued that there was a breach by him of an implied contract. I find it difficult to understand what the nature of the suggested implication could be, unless it were to be the effect that he agreed or consented that, if he lost his ticket, the company should be authorized to lay hands on him and remove him from their carriage.

I see no evidence whatever of any contract of that kind. If there were any breach of contract by him, it seems to me clear that they were not entitled to lay hands on him, but that their remedy would be by proceeding for the amount of the fare which he refused to pay. The case of *Wood* v. *Leadbitter*, *supra*, was relied upon by the counsel for the defendants; but I do not think that the principles enunciated in that case have any application to the present. The question there was as to the right to go upon land. The present case is one of a contract to carry with reasonable care, and has nothing to do with land or any easement over or license to go upon land. It does not appear to me that any question as to the revocability or otherwise of a license arises. For these reasons I agree that the appeal should be allowed.

The principal case is a good instance of how far the English Courts will go to protect the rights of individuals against infringement by corporations. To any one unfamiliar with English railway management and English law, the statement of LOPES, L. J., that there is "no authority on such an important point as that raised in the present case," would

seem only less surprising than his doubt whether any regulation could be framed which would protect railway companies from the consequences of expelling from a train a passenger claiming to have lost his ticket during the journey, and refusing on that ground to comply with the by-law sought to be enforced in the principal case.

By the Railways Clauses Consolidation Act, 8 & 9 Vict. c. 20, § 103, any person travelling in any carriage of a railway company without having previously paid the fare, or beyond the distance paid for, and with intent to avoid payment, "shall for every such offence forfeit to the company a sum not exceeding forty shillings," and by § 104, such person may be at once apprehended by the servants of the company. The penalty is recoverable in a summary proceeding before two justices of the peace, and can be enforced by a distress warrant: §§ 145, 146. See *Reg.* v. *Paget* (1881), L. R. 8 Q. B. D. 151. The operation of this law is strictly confined to cases of fraudulent intent (*Dearden* v. *Townsend* (1865), L. R. 1 Q. B. D. 10), but to its effective provisions it is probably due in part that no authority bearing directly on the principal case could be found. Another reason for this must lie in the English system of inspection of tickets before the train leaves any principal station, which system, though less thorough than the continental practice of inspection as the passenger leaves the waiting-room at any station, great or small, is apparently sufficient to warrant the belief that the plaintiff had his ticket when he got on the train, and had already showed it.

Before considering the American law on the expulsion of passengers for not having proper tickets, it may be as well to notice the decisions on the statute above cited, and on by-laws like that in the principal case.

The use of a non-transferable ticket by one not the purchaser is fraudulent under this Act: *Langdon* v. *Howells* (1879), L. R. 4 Q. B. D. 337. But see *Glover* v. *L. & S. W. R.* (1867), L. R. 3 Q. B. D. 25, where a passenger had a valid ticket himself, but gave a ticket on which he had already travelled to a friend to use over again, this aid in the perpetration of a fraud was held not to justify the former's apprehension and detention under the statute, though it would necessitate nominal damages only in a suit for illegal arrest.

In *Dearden* v. *Townsend*, *supra*, it was held that as the company's by-laws must not be repugnant to the statute, a by-law similar to that in the principal case could only apply to attempts to defraud the company, and not to the case of a party travelling without having paid for and obtained a ticket, but with no attempt to defraud. In that case the passenger had gone beyond the station for which he had booked, and offered to pay the difference. For a parallel case on another by-law, see *Bentham* v. *Hoyle* (1878), L. R. 3 Q. B. D. 289.

Of course, as COCKBURN, C. J., said in *Saunders* v. *S. E. R.* (1880), L. R. 5 Q. B. D. 456, "the want of a ticket affords *prima facie* evidence of fraud, and entitles the company to put the traveller to the proof of the absence of a fraudulent intention. The refusal to produce a ticket leads in like manner to the inference that the party has none, and consequently to the inference of fraud."

In *Jennings* v. *G. N. R.* (1865), L. R. 1 Q. B. D. 7, it was held that, such a by-law being established for the benefit of the company, they must keep strictly within its provisions. Where they had allowed a passenger travel-

ling in one part of a train, to retain the tickets of the servants who accompanied his horses, the contract was with the master, and when the train was divided into sections, the master's carriage going in the first section, the servants ought not to have been prevented from following him in the other section.

In *Chilton* v. *L. & C. R.* (1847), 16 M. & W. 212, and *Brown* v. *G. E. R.* (1877), L. R. 2 Q. B. D., 406, similar by-laws were considered, but without decision as to their validity. In the latter case it was held that the by-law must be enforced, by a demand for the fare required by it, before the passenger could be arrested under the statute.

Such a by-law was held to apply to the case of season-ticket holders in *Woodard* v. *E. C. R.* (1861), 30 L. J. M. C. 196.

In *L. B. & S. C. R.* v. *Watson* (1878), L. R., 3 C. P. D. 429; s. c. on appeal 4 Id. 118 (a curious instance of English tenacity to principle, the sum in controversy being one penny), and *Saunders* v. *S. E. R.*, *supra*, such by-laws were held invalid, on account of the variable penalty imposed. As LUSH, J., said in the latter case, "A passenger who has travelled only the last ten miles in a train which has travelled a hundred miles, is fined ten times as much as another who started at the station *a quo*, and whose ticket was demanded at the end of ten miles, although the offence of refusing to show the ticket is precisely the same in the one case as in the other. A by-law which has this effect cannot be deemed a reasonable by-law."

In the United States and Canada, the laws making it an offence to attempt to travel without paying the proper fare are rarely enforced. Railroad companies usually rely on the simple remedy of putting the offender summarily off the train. It is a well-settled general rule that, as between the railroad conductor and the passenger, the latter's ticket, or the stop-over check sometimes given in its place, is the only admissible evidence of his right to travel; that he must produce it whenever called upon by the conductor to do so, and also surrender it to him on request. It is equally well settled that a railroad company can expel from its trains all persons who are neither provided with such tickets as the rules of the company require, nor willing to pay the regular fare, plus such reasonable sum as the company may add when fares are paid on the cars. Hence, if the circumstances out of which the principal case arose had occurred on this side of the Atlantic, the plaintiff could not have recovered, unless, perhaps, if the conductor had already seen the ticket and cancelled it so that it could not be used over again, and remembered these facts. The present note will, therefore, consider only the limits of this unquestionable right to eject passengers, the manner in which it must be exercised, and the damages for unlawful expulsion.

*Loss of ticket.* It may be laid down as a rule, with one possible exception, to be noted below, that the loss of a ticket falls on the passenger. Thus in *Duke* v. *G. W. R.* (1856), 14 U. Can. Q. B. 377, the plaintiff had bought a ticket from St. Catharine's to Paris, but had lost it at the time of, or after starting, and so informed the conductor. He demanded the fare, and, on her refusal to pay, put her off the train at Grimsby. The judgment on the points reserved was for the defendants, BURNS, J., saying, "I do not see that the defendants should be held responsible for the loss of the ticket, which it was the wife's duty to have taken care of, sup-

posing that she in truth had one, as the evidence of her having paid for her seat. She chose to accept the contract of undertaking to produce that evidence when required; and if, by carelessness, negligence, or accident, she has lost that evidence of payment, she must be at the mercy of the defendants in regard to the fare being demanded by the conductor, and can have no legal right to say that the loss excuses from performance of the contract on her part, viz: to produce the ticket when required."

*Hamilton* v. *N. Y. C. etc., R.* (1872), 51 N. Y. 100, is to the same effect. The plaintiff had stopped over between Buffalo and Albany, and on resuming his journey failed to produce the coupon entitling him to passage to Albany. The evidence was in conflict as to whether he had left this coupon in the train, or whether the conductor had taken it up when the plaintiff got off; but the Court said that, even if he had merely lost it, "by the terms of the ticket it was good only upon its presentation, with the checks attached, to the conductor. If, therefore, the holder voluntarily or negligently deprived himself of that right, or because unable, in consequence of his own act or omission, of presenting (*sic*) the ticket in that form, he could not claim any privilege or right under it." Similarly, it was said in a steamboat case, "If the plaintiff lost his ticket, it would be his own loss, and not one which the defendants were to bear:" *Standish* v. *Narr. Stbt. Co.* (1873), 111 Mass. 512.

The same rule holds good in regard to season tickets, whether the commuter has merely forgotten to have his ticket with him, as in *Downs* v. *N. Y. N. H. & H. R. R.* (1869), 36 Conn. 287, or has lost it, as in *Cresson* v. *P. & R. R.* (1875), 11 Phila. (Pa.) 597. In the latter case, the plaintiff had offered to indemnify the company against any possible loss through use of his ticket by another person; but it was *held*, that this did not affect the conductor's right to eject him.

The rule is also the same where the conductor has taken up a ticket and given a conductor's check in its place, at least where there has been a change of conductors and the check is demanded by the new one. In such a case it has been *held*, that as the check was as good as a ticket, "when [the passenger] had lost it, the loss was his, and he was situated as he would have been if the ticket had been returned to him and he had lost that, and as any one would be who bought a ticket to any opera or a lecture, or that would entitle the holder of it to any other privilege, and had lost it. Having lost it, he was called upon by the proper conductor to pay his fare. He had not any ticket or check to pay it with, and refused to pay it in money. Consequently, there was a refusal to pay it at all, and the conductor rightly expelled him from the train:" *Jerome* v. *Smith* (1876), 48 Vt. 230.

The case of a ticket for a berth in a sleeping-car has been held not to be within the rule. In *Pullman P. C. Co.* v. *Reed* (1874), 75 Ill. 125, the plaintiff had bought a ticket for his berth, but lost it before the train started, and it was not found till the next morning. He obtained a written statement from the ticket agent that he had bought the ticket, but the conductor refused to let him stay in the sleeping-car. The plaintiff was held entitled to recover the price paid for his ticket and a reasonable compensation for the trouble and inconvenience he suffered by being deprived of his berth, but a judgment on a verdict for $3000 was reversed as excessive. This case clearly did not come

under the general rule as to lost tickets, both because the plaintiff proved to the conductor that he had had a ticket, but had lost it, and because a berth-ticket, being limited to a particular berth on a particular day, could not be used more than once, so that the company could have suffered no loss by allowing the plaintiff to retain his berth, even if the ticket had been found by an outsider.

The only possible exception to the rule is that already alluded to, where the conductor has already seen and punched the passenger's ticket, so that it could not be used again, and remembers this fact. There would seem to be no decision on this point, but in *Hibbard* v. *N. Y. & E. R.* (1857), 15 N. Y. 455, 461, it was said *obiter* that the conductor could not be presumed to remember such a fact. See *Robson* v. *N. Y. C., etc., R.* (1880), 21 Hun (N. Y.), 387, the conductor had seen and punched the plaintiff's tickets before the latter lost them. As, however, the case was decided on the ground that the expulsion, having been made without any demand for the fares, was illegal, the effect of the conductor's knowledge that the plaintiff had had his tickets was not passed upon.

It may be observed in this connection, in regard to conductor's checks, that in *Jerome* v. *Smith*, *supra*, the check was asked for by a new conductor, who could not have known that the plaintiff had received one.

*Other cases of failure to produce a ticket.* Where a passenger has carelessly taken a train which does not stop at his station, and refuses to pay his fare to the first stopping-place beyond, he may be summarily ejected: *A., T. & S. F. R.* v. *Gants*, February 11, 1888, Sup. Ct. of Kan. So where the company requires passengers travelling on freight trains to purchase their tickets beforehand, and the passenger, finding no one in the ticket-office, gets on the train without looking to see if the ticket-agent is anywhere about the station: *I. & St. L. R.* v. *Kennedy* (1881), 77 Ind. 507. But if the ticket-office be shut and the passenger be guilty of no negligence, he is entitled to passage on the train on payment of his fare: *S. K. R.* v. *Hindsdale*, February 11, 1888, Sup. Ct. Kan.; *Brown* v. *K. Cy., H. S. & G. R.*, Id.

In *Shelton* v. *L., S. & M. S. Ry. Co.* (1876), 29 O. 214, which was cited by defendants' counsel in the principal case, but not referred to by the Court, the company had made a rule that a passenger who failed to produce a ticket or pay his fare should be put off the train; and this was held reasonable, even where the ticket had, before the passenger entered the train, been wrongfully taken from him by a servant of the company. The same doctrine was upheld in *Townsend* v. *N. N. C. etc., R.* (1879), 56 N. Y. 295, where a passenger whose ticket, entitling him to stop over, had been wrongfully taken up early in his journey, and he stopped over without any ticket whatever.

*Expired tickets.* It is familiar law that, if a railroad ticket of any kind be limited on its face to use within a certain time, it is not good after that date, and the passenger presenting it may be expelled from the train, if he refuse to pay his fare. And it is immaterial that the passenger be ready to start and go to the station before midnight of the day the ticket expires, if the last train of that day have actually left: *Arnold* v. *P. R. R.* (1886), 115 Pa. 135. But it is sufficient if the journey be begun before midnight of the day on which the ticket expires. It need not be completed before that time: *G. S. R.* v. *Bigelow* (1881), 68

Ga. 219; *Evans* v. *St. L., I., M. & S. R.* (1882), 11 Mo. App. 463; *Auerbach* v. *N. Y. C., &c., R.* (1882), 89 N. Y. 281; s. c. 21 AMERICAN LAW REGISTER, 790 and note. In such case the journey must be continuous. A passenger cannot stop over, and resume his journey after the expiration of his ticket: *Hill* v. *S. B. & N. Y. R.* (1875), 63 N. Y. 101.

If the limitation does not appear on the face of the ticket, and there is no proof that the passenger knew that such tickets were limited, and sold as such, he cannot be ejected from the train: *P. R. R.* v. *Spicker* (1884), 105 Pa. 142.

The words "good for this trip only" on a ticket have been held to relate to the journey, and not to time, so that the ticket can be used at any time within six years: *Pier* v. *Finch* (1859), 24 Barb. (N. Y.) 514.

If a ticket be invalid from lapse of time, or any other cause, except that it has been already used over the whole distance, or has been obtained by fraud, the passenger has a right to reclaim it, as evidence of value paid: *Vankirk* v. *P. R. R.* (1874), 76 Pa. 66.

*Stopping over.*—The authorities are clear that a railroad ticket is good only for a continuous passage between the points named thereon, unless the ticket itself or the rules of the company expressly provide otherwise, and that, if the company requires a stop-over check to be obtained, such rule must be complied with. In the absence of any stop-over privilege, stopping over is regarded as an abandonment of the right to demand passage for the rest of the distance: *Drew* v. *C. P. R.* (1876), 51 Cal. 425; *Stone* v. *C. & N. W. R.* (1877), 47 Ia. 82; *Hill* v. *S. B. & N. Y. R.* (1875), 63 N. Y. 101; *Deitrich* v. *P. R. R.* (1872), 71 Pa. 432. A ticket-agent at a way station has generally no authority to vary the terms of the ticket in this respect: *McClure* v. *P. W. & B. R. R.* (1871), 34 Md. 532. But a train-agent or conductor can usually do so: *Turbell* v. *N. C. R.* (1881). 24 Hun (N. Y.), 51. Such permission is valid only for the particular stop for which it is given, and not for a second stop: *Denny* v. *N. Y. C., etc. R.* (1874), 5 Daly (N. Y.), 50. And where the company's rules provided that train-agents only should authorize stopping over, and the passenger, having stopped over, had told the train-agent of the second train that the conductor of the first train had authorized the stop, he was not allowed to show that such authority had really been given by the train-agent: *Petrie* v. *P. R. R.* (1880), 42 N. J. L. 449.

Where a ticket entitled the passenger to stop over at any point for which he had a coupon, and the conductor took up the coupon for passage from A. to B., and also that from B. to C., giving in exchange a check with no stop-over privilege, and the plaintiff stopped over at B., it was held that by the contract he was not bound to give notice of his stop, but could form the intention of stopping at any time before the train left B., and also that, the company having, for its own purposes, demanded of him the proper evidence of the contract, it was bound to put him in as good a position as if he had not parted with such evidence. Hence, his action was maintainable: *Palmer* v. *C. C. & A. R.* (1872), 3 S. C. (N. S.) 580.

In *Maine* all tickets, except excursion, return and other special tickets at reduced rates, are good for six years from the date of issue, may be used on any train, and entitle the holder to "stop at any station along the line of the road at which such trains stop:" *R. S. Maine*, 1884,

p. 4771, Tit. iv. c. 51, s. 44. See *Dryden* v. *G. T. R.* (1872), 60 Me. 512; *Carpenter* v. *G. T. R.* (1881), 72 Id. 388.

*Irregular tickets.*—Tickets must be used in accordance with the conditions under which they are issued. Hence, where a ticket provides that the coupons attached shall be void if detached, and a passenger presents coupons without the ticket, he can be required to pay his fare or leave the train: *Marshall* v. *B. & A. R.* (1887), 145 Mass. 164; *Walker* v. *Dry Dock, etc. R.* (1867), 33 How. (N. Y.) 327; *Hamilton* v. *N. Y. C., etc. R.* (1872), 51 N. Y. 101; *H. & T. C. R.* v. *Ford*, 53 Tex. 364. So if a non-transferable ticket be used by one to whom it was not issued: *Cody* v. *C. P. R.* (1876), U. S. Circ. Ct. Dist. Nev., 4 Saw. 114. So if a ticket for passage from one station to another be attempted to be used in the reverse direction: *Keeley* v. *B. & M. R.* (1878), 67 Me. 163. It is also well settled that if a railroad has more than one line between two points, a passenger having a through ticket must go by the most direct route: *Bennett* v. *N. Y. C., etc. R.* (1877), 69 N. Y. 594.

Where a passenger's ticket purports to entitle him to travel on any regular train, and he has no notice that it is restricted to special trains, he is entitled to travel on it: *Maroney* v. *O. C. & N. R.* (1870), 106 Mass. 153. This is especially so where a servant of the company has told the passenger to get on the train, and he offers to pay the regular fare for passage on such trains: *L. S. & M. S. R.* v. *Rosenzweig* (1886), 113 Pa. 519. In that case it was argued that it was the duty of the purchaser of a ticket to know on what train it could be used, and that the company's rules and regulations were part of the contract, but the Court said, p. 538, "The legal presumption of knowledge has never been extended to the by-laws and regulations of private corporations. No necessity has been shown for judicial enunciation that there is a legal presumption, or a fiction of law, that a person about to become a passenger, or who has become a passenger on a railway, knows the rules and regulations of the railway company."

In *P. R. R.* v. *Connell* (1884), 112 Ill. 295, the appellee's ticket had a coupon for passage over the appellant's line from Philadelphia to New York, but the Wabash company, who sold it, had previously had its authority to sell such tickets revoked, and in fact sold it with the expectation that the Baltimore and Ohio company would change the coupon for one by the Philadelphia and Reading line; but the appellee was not told this when he bought the ticket, nor had he any knowledge that it would not be received on the appellant's road. He attempted to use it on that road, and was ejected from the train. Judgment was reversed for error in the measure of damages, but the Court was of opinion that the ticket, having been sold by the Wabash company as agent for the appellant, was valid according to its terms. It is noticeable that the Court did not refer to the revocation of the agency. Of course, as a general rule, a principal who has made public the existence of an agency must also give publicity to its revocation; but all that a passenger usually knows of the relations between the various companies over whose lines his ticket takes him is that the ticket itself states that the company that sold it did so as agent for the others, no statement of the fact of this agency being made to him by the principals. Hence it is hard to see how the case comes within that rule of agency, or how the appellee's

position differed from what it would have been had the Wabash company never been at any time the appellant's agent.

*Irregularities in purchase of tickets.*—A ticket bought from any one not a general agent of the railroad company for the sale of its tickets, is bought at the passenger's risk in case such ticket turn out to be irregular. *H. & T. C. R.* v. *Ford* (1880), 53 Tex. 364. In that case the ticket was bought of one not an agent of the defendant, and had been issued by an agent of another company, which was authorized by defendant to issue its tickets in a prescribed form. This ticket was not in that form, and the plaintiff had to leave the train. It was held that he could not recover, both for the reason above given and because the words, "not good if detached," on the face of the ticket were notice that it could not be used in the way the plaintiff attempted to use it. But if the ticket had been properly issued, and is valid on its face, the fact that it was bought of a "ticket scalper" in a State where "scalping" is lawful, does not invalidate it for use even in a State where such unauthorized selling is forbidden: *Sleeper* v. *P. R. R.* (1882), 100 Pa. 259.

A passenger who seeks to travel on a ticket which he had paid for in counterfeit money, must pay his fare or leave the train, even if he did not know the money was counterfeit: *M. & C. R.* v. *Chastine* (1877), 54 Miss. 503. Similarly, a *bona fide* holder of a properly stamped and dated ticket, which has been obtained by fraud, can make no use of it, though he be without notice of the fraud: *Frank* v. *Ingalls* (1885), 41 O. St. 560.

Where a passenger bought his ticket on the train, and the conductor afterwards found that he had given too much change, and the former refused to examine his change to see if the conductor was right, it was held that, as he had the means at hand to learn the truth, he could not recover for his expulsion: *McCarthy* v. *C. R. I. & P. R.* (1876), 41 Iowa, 432.

*Acts and statements of ticket agents and others.*—Such acts and statements do not usually affect the general American rule, given above, in regard to controversies between a conductor and a passenger. Hence where, as in *Frederick* v. *M. H. & O. R.* (1877), 37 Mich. 342, a passenger requests and pays for a ticket to his destination, but receives one for a shorter distance, and is ejected, he can sue for the breach of contract in giving him the wrong ticket, but not for the tort in expelling him. To the same effect, *C. B. & Q. R.* v. *Griffin* (1873), 68 Ill. 499; *Bradshaw* v. *S. B. R.* (1883), 135 Mass. 407. So where a passenger asks for a stop-over check, but is given a trip-check by mistake, and, on resuming his journey, is ejected: *Gorton* v. *M. L. S. & W. R.* (1882), 54 Wis. 234. And where the ticket-agent had told the plaintiff that he could take a certain train to his destination, and he got on the train accordingly, but the train was not one of those that stopped at his station, it was held that the conductor could lawfully eject him for refusing to pay his fare to the station beyond, although he had a right of action against the company for not carrying him to his station: *L. S. & M. S. R.* v. *Pierce* (1882), 47 Mich. 277.

There are some cases which are held not to come under the above rule, but the distinction is not very clear. Thus in *Murdock* v. *B. & O. R.* (1884), 137 Mass. 293, where the ticket agent had given the plaintiff a ticket already punched, and the latter had noticed this and asked about it, and the agent explained how it happened, and said

that the ticket was perfectly good, it was held that the plaintiff had a right to act on the agent's statements and explanations, and to refuse to leave the train. In *Hufford* v. *G. R. & I. R.* (1885), 53 Mich. 118, the plaintiff believed in good faith that the ticket which he had bought from the authorized agent of the company, was genuine, issued by the company, and such as the agent had a right to sell, but the conductor refused to receive it, stating that it bore the marks of having been used before. The plaintiff stated the facts to the conductor, but was ejected. It was at first said that, when the plaintiff found that the ticket was not good, he should have paid his fare; though, if it were apparently good, he could refuse to leave the car. When the case (February 3, 1887) came up again, after another trial, the Court went further, and said that the conductor was bound to accept the facts stated by the plaintiff as true, until the contrary was proven, without regard to any words, figures, or other marks on the ticket. In *P. W. & B. R.* v. *Rice* (1886), 64 Md. 63, the return-coupon of the plaintiff's ticket had been accidentally punched on the outward trip by the conductor, who then failed to correct his error on the ticket in the way the company's rules required. It was held that as the plaintiff was in no fault whatever, his expulsion on the return journey was wholly illegal.

Several cases have grown out of the provisions in certain return tickets, requiring that the holder be identified before his return by an agent at the place to which the ticket is issued, and sign the ticket before such agent, who shall then stamp the ticket in due form. If a passenger neglect to comply with this rule, he can be ejected, and has no remedy: *Moses* v. *E. T. V. & G. R.* (1884), 73 Ga. 356. If he seek to comply, but the agent, being the proper agent of the company issuing the ticket, refuse to identify and stamp the ticket, the passenger can recover in tort if ejected: *Head* v. *G. P. R.*, S. Ct. Ga., Dec. 20, 1887. And where the ticket was signed before and stamped by an agent at another place than that designated, evidence that he was an authorized agent of the company is admissible to show a waiver of the condition: *Taylor* v. *S. & R. R.* (1888), 99 N. C. 185. But where the ticket was to a point beyond the defendant's line, and the agent of the second carrier was the proper party to apply to, and the plaintiff went to the office of such agent at the proper time, but found it shut, it was held that he could not proceed against the defendant, as the party in fault was not its agent: *Mosher* v. *St. L., I., M. & S. R.* (1888), 127 U. S. 390.

As a general rule, all evidence of previous waivers of the company's rules by its servants is irrelevant: *Sherman* v. *C. & N. W. R.* (1874), 40 Iowa, 45; *Keely* v. *B. & M. R.* (1878), 67 Me. 163; *Marshall* v. *B. & A. R.* (1887), 145 Mass. 164; *Hill* v. *S. B. & M. Y. R.* (1875), 63 N. Y. 101. But where a commutation-ticket, on its face not valid unless signed by the holder, has been honored several times by the company's servants, although not signed, such waivers of the requirement bind the company, and the ticket can be used without a signature: *Kent* v. *B. & O. R.* 45 Ohio St. 284.

*L. E. & W. R.* v. *Fix* (1882), 88 Ind. 381, is a peculiar case. The conductor of a train, fearing arrest, hid himself on the engine and sent a brakeman to take up the tickets. He, being unused to the work, took up the wrong half of a return ticket, and

the plaintiff, who had not noticed the mistake, was only able to produce the outward coupon, on his return journey, and was ejected in consequence. He was allowed to recover for the expulsion.

How far the statements of a ticket agent are admissible as evidence in an action against a railroad company is another question. In *Melville* v. *B. & P. R.* (1882), 2 Mack. (D. C.) 63, it was held that a ticket issued on certain conditions, and signed by the passenger, was such a written contract as could not be altered by evidence of what a ticket-agent said. In *Rawitzky* v. *L. & N. R* (La.), 3 South. R. 357, it was held that a passenger could not recognize one part of a clause in the conditions of a ticket which he had signed, and repudiate another part of the same. In *Burnham* v. *G. T. R.* (1873), 63 Me. 298, the real contract was held to be that made between the plaintiff and the ticket-agent, before the former saw the ticket, and that evidence of this verbal contract was admissible to do away with the effect of the words "good for this day only," which were printed on the ticket; and in *Robinson* v. *L. & N. R.* (1879), 2 Lea (Tenn.) 594, an ordinary ticket was said not to be such a written contract as to exclude parol representations, made at its sale. In *Vankirk* v. *P. R. R.* (1874), 76 Pa. 66, the ticket-agent's statements, made some days after the ticket was sold, were held evidence of the passenger's good faith, but their admissibility to establish a contract was not decided.

Though a servant of the railroad company may have been in fault, contributory negligence on the plaintiff's part will prevent a recovery. Thus, where a father, travelling with his lunatic son, got out for a few minutes at a station, leaving the son in the car, and the son moved to another part of the train, and before the father could find him, his ticket was demanded by the conductor, who, not knowing that he was a lunatic, nor that his father had bought the tickets, put him off the train. The father was held to have no right of action: *Willetts* v. *B. & R. R.* (1853), 14 Barb. (N. Y.) 585.

It is the duty of a railroad company to provide seats for its passengers, hence if a passenger can find no seat on a train, his refusal to produce his ticket does not make him a trespasser, and he cannot be ejected, except at a regular station: *Hardenbergh* v. *St. P., M. & M. R.*, S. Ct. Minn., June 18, 1888. But if he refuse to show his ticket without good reason, merely because he cannot get a perfectly satisfactory seat, he becomes a trespasser: *M. & C. R.* v. *Benson*, 85 Tenn. 627; *C., O. & S. R.* v. *Wells*, Id. 613.

*Payment on trains.*—It is well settled that a passenger paying his fare on a train may be required to pay a reasonable amount, usually ten cents, in excess of the rate at the ticket office, and that he may be ejected for refusal to do so. To warrant the enforcement of such a rule, there must have been an office at the station, where the passenger could buy his ticket: *Poole* v. *N. P. R.*, S. Ct. Oregon, April 30, 1888; and it must have been kept open for a reasonable time before the train was advertised to leave: *C. B. & Q. R.* v. *Parks* (1857), 18 Ill. 460; *St. L., A. & C. R.* v. *Dalby* (1857), 19 Id. 353; *C. & A. R.* v. *Flagg* (1867), 43 Id. 364; *I. C. R.* v. *Johnson* (1873), 67 Id. 312; *Paine* v. *C. R. I. & P. R.* (1877), 43 Iowa, 569; *Hall* v. *S. C. R.*, S. Ct. S. C., March 20, 1888. The case of *Curl* v. *C. R. I. & P. R.* (1884), 63 Iowa, 417, is not an authority to the contrary, as the

absence of the ticket agent was not the ground of the refusal to pay the extra fare. In New York, however, the contrary has been held: *Bordeaux* v. *Erie R.* (1876), 18 Hun (N. Y.) 579. After the regular time for a train to leave, even though it be delayed, it is no longer the company's duty to keep the ticket-office open: *St. L., A. & T. H. R.* v. *South* (1867), 43 Ill. 176; *C. B. & Q. R.* v. *Griffin* (1873), 68 Id. 499; *T. W. & W. R.* v. *Wright* (1879), 68 Ind. 586; *Swan* v. *M. & L. R.* (1882), 132 Mass. 116.

*How long the right to pay fare lasts.*— If a passenger who has produced no ticket, or an irregular one, though at first unable or unwilling to pay the fare demanded of him, offer to do so at any time before steps have been taken to eject him, the conductor ought to accept the fare: *C. B. & Q. R.* v. *Bryan* (1878), 90 Ill. 126; *O'Brian* v. *N. Y. C., etc. R.* (1880), 80 N. Y. 236. And the conductor ought not to act hastily in stopping the train. A passenger who is acting in good faith may reasonably suppose that his argument or explanation will have weight with the conductor; and if the first intimation to the contrary is the latter's pulling the bell-cord, it is even then not too late to tender the fare: *T. & P. R.* v. *Bond* (1884), 62 Tex. 442. So, if a passenger have not money enough to pay the full fare demanded, but says that he will try to borrow it, he must be allowed a reasonable time in which to do so: *Curl* v. *C., R. I. & P. R.* (1884), 63 Iowa, 417. But, as a general rule, after the conductor has stopped the train and begun to eject the passenger, it is too late for him to produce a valid ticket, if he has one: *State* v. *Campbell* (1867), 32 N. J. L. 309; *Hibbard* v. *N. Y. & E. R.* (1857), 15 N. Y. 455, 462; or the ticket accompanying a detached coupon which he has presented: *L. N. & G. S. R.* v. *Harris* (1882), 9 Lea (Tenn.), 180, or to offer to pay his fare: *Bland* v. *S. P. R.* (1880), 55 Cal. 570: *Hoffbauer* v. *D. & N. W. R.* (1879), 52 Iowa, 342; *C. S. & C. R.* v. *Skillman* (1883), 39 O. 444; *Gould* v. *C. M. & St. P. R.*, U. S. C. Ct. Dist. Minn. (1883), 18 Fed. Rep. 155. And if the ejected passenger get on the train again, he may, though he offer to pay his fare, be again ejected: *O'Brien* v. *B. & W. R.* (1860), 15 Gray (Mass.), 20. The same rule holds if a passenger, having been put off at a regular station, offer to pay his fare: *Pease* v. *D., L. & W. R.* (1886), 101 N. Y. 367. The case of *S. C. R.* v. *Nix* (1882), 68 Ga. 572, seems to be contrary to the rule, but the decision was probably warranted by the conductor's hasty action.

It has been held that if the passenger be not a trespasser, and another passenger offer to pay the fare, even after the ejection has begun, the conductor ought to receive it: *Guy* v. *N. Y., O. & W. R.* (1883), 30 Hun, (N. Y.) 399, it was said, *obiter*, that if a passenger be ejected at a regular station, and there purchase a ticket or tender his fare for the whole journey, including the distance already traversed, he ought to be taken on the train. The dictum as to tendering the fare is probably overruled by *Pease* v. *D., L. & W. R.*, *supra*. In *Stone* v. *C. & N. W. R.* (1877), 47 Iowa, 82, the plaintiff had been ejected for want of a proper stop-over check, but bought a ticket for the rest of his journey and attempted to get on the train again, when the conductor prevented his doing so. In *Swan* v. *M. & L. R.* (1882), 132 Mass. 116, the conductor had told the ticket-agent not to sell a ticket to the plaintiff, who had just been ejected. In both these cases *O'Brien* v. *B. & W. R.*, *supra*, was

relied on, and the plaintiff not allowed to recover, and in the Iowa case, the Court added, "This ruling by no means excludes him from any other train." *O'Brien* v. *B. & W. R.* seems hardly an authority for these cases, as the ground of the ruling there was that the plaintiff, irrespective of his having been ejected, had no right to take passage on the train except at a regular station. The Court did indeed hold that the plaintiff's position would have been the same, even if he had been put off at a regular station, but that was not necessary to the decision. It is hard to understand how common carriers can refuse to enter into the usual contract of carriage with a man, merely because he has just been guilty of an actionable breach of contract with them, or even because he has trespassed on their property, so long as they do not prosecute him, or how, if they can refuse to contract with him, the mere inconvenience of his having to wait for the next train can suffice to purge him of the consequences of his trespass or breach of contract, as was held in *Stone* v. *C. & N. W. R.*, *supra*. In *O'Brien* v. *B. & W. R.*, *supra*, it was said that the plaintiff could not call on the railroad company "to perform the same contract which he had previously broken." In that case, the contract was rightly viewed as the same one, as a new one could not have been entered into except at a regular station, but what the plaintiff sought in *Stone* v. *C. & N. W. R.* and *Swan* v. *M. & L. R.*, was clearly a new contract.

*Expulsion of passengers.*—If a passenger claim to have lost his ticket, the conductor must give him a reasonable time in which to find it. What is a reasonable time is a question of fact for the jury: *I. & G. N. R.* v. *Wilkes*, S. Ct. Texas, October 18, 1887. This is especially true in the case of commuters: *Maples* v. *N. Y., N. H. & H. R.* (1871), 38 Conn. 557. As already noticed, a passenger cannot be put off a train until he has been asked to pay his fare: *Robson* v. *N. Y. C. & C. R.* (1880), 21 Hun (N. Y.), 387, and given a reasonable time in which to decide whether to do so or not, *T. & P. R.* v. *Bond* (1884), 62 Tex. 442, or in which to borrow money: *Curl* v. *C. R. I. & P. R.*, *supra*.

It has been held that if a passenger, with a ticket marked "good this day only," stops over, in reliance on the ticket-agent's assurance that he is entitled to do so, and the conductor has no reason to disbelieve the passenger's story, he must offer to refund the value of the unused part of the ticket, or to deduct the amount from the fare demanded, before he can eject the passenger: *Burnham* v. *G. T. R.* (1873), 63 Me. 298. This case grew out of facts occurring before the adoption of the Maine statute, cited *supra*, entitling passengers to stop over. Similarly a passenger cannot be ejected for refusing to pay the extra fare charged on trains, until what he has already paid be refunded: *Bland* v. *S. P. R.* (1880), 55 Cal. 570. But where the amount paid did not exceed the fare, at the rate charged on trains to the point where the passenger was ejected, the conductor has been held entitled to retain this sum: *Hoffbaur* v. *D. & N. W. R.* (1879), 52 Iowa, 342.

A passenger, who is not a trespasser, can in general only be put off at a regular station: *Maples* v. *N. Y., N. H. & H. R.* (1871), 38 Conn. 557; *Hardenbergh* v. *St. P. M. & M. R.*, S. Ct. Minn. June 18, 1888; *Arnold* v. *P. R. R.* (1886), 115 Pa. 135. But a trespasser can be put off anywhere, provided it can be done without exposing him to serious danger: *McClure*

v. *P. W. & B. R.* (1871), 34 Md. 532; *Wyman* v. *N. P. R.* (1885), 34 Minn. 210; *C. S. & C. R.* v. *Skillman* (1883), 39 Ohio St. 444. In Illinois a statute requires that any expulsion shall take place at a regular station: See *T. H. A. &c. R.* v. *Vanatta* (1859), 21 Ill. 188. And even if a passenger offers to leave the train at once, and it is stopped for him, and he then refuses, this is no excuse for not taking him to the next station: *C. & N. W. R.* v. *Peacock* (1868), 48 Ill. 253. But if the passenger be lawfully ejected, and suffer no special damage, he can only recover nominal damages for being put off away from a regular station: *C. & A. R.* v. *Roberts* (1866), 40 Ill. 503. A similar statute in Indiana has been held permissive only, and not directory: *Jeff. R.* v. *Rogers* (1867), 28 Ind. 1; s. c. (1871), 38 Id. 116; *T. W. & W. R.* v. *Wright* (1879), 68 Id. 586.

The expulsion may be effected by force, provided no more force be used than is necessary to overcome resistance: *Gallena* v. *H. S. R. R.*, U. S. C. Ct., E. Dist. Ark. (1882), 13 Fed. Rep. 116; *Coleman* v. *N. Y., N. H. & H. R. R.* (1870), 106 Mass. 160; *G. W. R. Co.* v. *Miller* (1869), 19 Mich. 305; *State* v. *Ross* (1857), 26 N. J. L. 224; *Jardine* v. *Cornell*, S. Ct. N. J., June 20, 1888.

Though a passenger, who is entitled to travel, may lawfully refuse to leave the train, he must not forcibly resist an expulsion, but must rely upon his legal remedies: *Hall* v. *M. & C. R.*, U. S. C. Ct., W. Dist. Tenn. (1882), 15 Fed. Rep. 57, 61; *A. T. & S. Fe R.* v. *Gants*, S. Ct. Kan., February 11, 1888; *P. R. R.* v. *Connell* (1884), 112 Ill. 295; *Bradshaw* v. *S. B. R.* (1883), 135 Mass. 407; *Lillis* v. *St. L. K. Cy. & N. R.* (1877), 64 Mo. 464; *Townsend* v. *N. Y. C., etc. R.* (1874), 56 N. Y. 295. His resistance may amount to contributory negligence: *Brown* v. *M. & C. R.*, U. S. C. Ct., W. Dist. Tenn. (1881), 7 Fed. Rep. 51, and the company will not be liable for any injuries he may receive, unless inflicted wilfully, wantonly, or maliciously: *A. T. & S. Fe R.* v. *Gants, supra.*

Though a railroad company is chargeable only with ordinary care towards trespassers, it cannot expose them to serious risks: *Rounds* v. *D. L. & W. R.* (1876), 64 N. Y. 129; *Arnold* v. *P. R. R., supra.* Thus where a man, who was helplessly drunk, was ejected in the snow at a distance from a station, and was badly frozen in consequence, the company was held liable: *L. C. & L. R.* v. *Sullivan* (1884), 81 Ky. 624. And expulsion at midnight, at a flag station, far distant from any other station, or in a severe storm, remote from shelter, may be evidence of reckless, wanton, and oppressive action on the conductor's part: *Evans* v. *St. L., I. M. & S. R.* (1882), 11 Mo. App. 463; *Vankirk* v. *P. R. R.* (1874), 76 Pa. 66. But where a drunken trespasser was ejected and left near the track, and was run over half a mile away from the station where he was displaced, there was held to be no evidence that this was a proximate result of the expulsion: *Haley* v. *C. & N. W. R.* (1866), 21 Iowa, 15.

*Damages.*—If a passenger be unlawfully expelled from a train, he can recover for bodily injuries, for damage to his business from loss of time, and also for the indignity and injury to his feelings: *C. & N. W. R.* v. *Williams* (1870), 55 Ill. 185; *C. & N. W. R.* v. *Chrisholm* (1875), 79 Id. 584; *Hicks* v. *H. & S. J. R.* (1878), 68 Mo. 329; *Quigley* v. *C. P. R.* (1876), 11 Nev. 350; *Allen* v. *C. & P. S. F. Co.* (1884), 46 N. J. L. 198; *D. L. & W. R.* v. *Walsh* (1885), 47 Id. 548;